

Respondent.

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<sup>1</sup> There is no date of delivery, but the proof of service affidavit was filed with us on July 17, 2013.

By failing to answer or otherwise respond to the complaint, Edwards has admitted the allegations it contains.<sup>2</sup> By failing to respond to the motion for summary decision, Edwards has failed to raise a genuine issue as to the facts the Director established in his motion.<sup>3</sup>

Accordingly, the findings of fact are based on the allegations contained in the complaint and the admissible documents submitted with the Director's motion: business records authenticated by a custodian of records affidavit and certified court documents from a criminal case against Edwards, including an indictment and judgment.

### **Findings of Fact**

1. Edwards is licensed as a peace officer by the Director. His license has been current and active at all times relevant to this case.

2. On July 10, 2012, Edwards pled guilty in the United States District Court, Eastern District of Missouri, to five counts of violating 18 U.S.C. § 242, deprivation of rights under color of law.

3. The facts of those crimes are as follows: Edwards was a detective in the Lincoln County, Missouri, Sheriff's Office and assigned to monitor persons in drug court. The victims in all five counts were in drug court and under Edwards' supervision. Edwards acted under color of law in each count. The individual circumstances of each crime were:

- a. Edwards deprived S.M. of her civil rights by engaging in acts that resulted in bodily injury and aggravated sexual abuse.
- b. Edwards deprived J.P. of her civil rights by engaging in acts that resulted in bodily injury and aggravated sexual abuse.
- c. Edwards deprived K.S. of her civil rights by engaging in acts that resulted in kidnapping and sexual contact.

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<sup>2</sup> 1 CSR 15-3.380(7)(C). All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

<sup>3</sup> 1 CSR 15-3.446(6)(B).

- d. Edwards deprived K.W. of her civil rights by engaging in sexual contact.
  - e. Edwards deprived L.M. of her civil rights by engaging in sexual contact.
4. The district court entered judgment on December 14, 2012 and sentenced Edwards to 120 months in the custody of the United States Bureau of Prisons to be followed by three years of supervised release.

### **Conclusions of Law**

We have jurisdiction over this case.<sup>4</sup> The Director is responsible for issuing and disciplining the licenses of Missouri peace officers.<sup>5</sup> When the Director files a complaint with this Commission asking us to determine there is cause for discipline, the Director bears the burden of proving by a preponderance of the evidence that the licensee committed an act for which the law gives the Director the authority to discipline the license.<sup>6</sup> A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.”<sup>7</sup> The Director argues that Edwards is subject to discipline under § 590.080.1, which provides:

1. The director shall have cause to discipline any peace officer licensee who:

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(2) Has committed any criminal offense, whether or not a criminal charge has been filed;

(3) Has committed any act while on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person[.]

#### Subsection (2) – Criminal Offense

Edwards pled guilty to five counts of deprivation of civil rights under color of law. A conviction resulting from a guilty plea collaterally estops the issue of whether the person

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<sup>4</sup> § 590.080.2. All statutory references to are to the 2012 Cumulative Supplement to the Missouri Revised Statutes unless otherwise noted.

<sup>5</sup> §§ 590.020, .030, and .080.

<sup>6</sup> See *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012) (dental licensing board demonstrated “cause” to discipline by showing preponderance of evidence).

<sup>7</sup> *Id.* at 230, quoting *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)

committed the criminal offense.<sup>8</sup> He committed five criminal offenses. His conduct falls squarely under § 590.080.1(2).

### Subsection (3) – Color of Law and Moral Turpitude

Edwards admitted that he acted under color of law as part of his guilty plea. The only remaining question is whether his crimes involved moral turpitude.

The statute does not define “moral turpitude,” but the concept exists in other disciplinary contexts and has been examined by Missouri courts. For example, in attorney disciplinary cases, the Supreme Court has “long defined moral turpitude as ‘baseness, vileness, or depravity’ or acts ‘contrary to justice, honesty, modesty or good morals.’”<sup>9</sup>

Not all criminal acts are acts of moral turpitude.<sup>10</sup> Missouri courts have examined several types of criminal acts in license discipline cases and held that certain ones always constitute acts of moral turpitude, others may, and some never do. In *Brehe*, the court explained there are three categories of crimes:

1. crimes that necessarily involve moral turpitude, such as fraud (so-called “Category 1” crimes);
2. crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (“Category 2” crimes); and
3. crimes that “may be saturated with moral turpitude,” yet do not necessarily involve it, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (“Category 3” crimes).<sup>11</sup>

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<sup>8</sup> *James v. Paul*, 49 S.W.3d 678, 682-83 (Mo. 2001); *Carr v. Holt*, 134 S.W.3d 647, 649 (Mo. App. E.D. 2004).

<sup>9</sup> *In re Duncan*, 844 S.W.3d 443, 444 (Mo. 1993)(internal citations and quotations omitted). *See also Brehe v. Mo. Dep’t of Elem. and Secondary Educ.*, 213 S.W.3d 720, 725 (Mo. App. W.D. 2007)(same definition used in discipline of teaching certificate).

<sup>10</sup> *Brehe*, 213 S.W.3d at 725.

<sup>11</sup> 213 S.W.3d at 725, quoting *Twentieth Century Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9<sup>th</sup> Cir. 1954).

While Category 3 crimes require inquiry into the circumstances, crimes such as murder, rape, and fraud fall into Category 1 because they are invariably regarded as crimes of moral turpitude.<sup>12</sup>

Edwards committed all of his crimes under 18 U.S.C. § 242:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State ... to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States ... shall be fined under this title or imprisoned not more than one year, or both; ... and ... if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

We need not determine whether 18 U.S.C. § 242 by itself is a Category 1 crime because the indictment and guilty pleas provide more information about Edwards' offenses.

Counts one and two involved "aggravated sexual assault" under 18 U.S.C. § 2241, which provides the following definition:

**(a) By Force or Threat.**--Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly causes another person to engage in a sexual act--

(1) by using force against that other person; or

(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

**(b) By Other Means.**--Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly--

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<sup>12</sup> *Brehe*, 213 S.W.3d at 725.

(1) renders another person unconscious and thereby engages in a sexual act with that other person; or  
(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby--  
(A) substantially impairs the ability of that other person to appraise or control conduct; and  
(B) engages in a sexual act with that other person;  
or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

While the indictment and guilty plea do not specify which of these bases applies to Edwards' offenses, we find that any of these methods would constitute a Category 1 crime. Counts one and two are Category 1 crimes.

Counts four and five involved sexual contact, which is defined under 18 U.S.C.

§ 2246(3), as:

the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person[.]

The charging documents do not specify the form of sexual contact used in Edwards' crimes. We cannot conclude that Edwards' crimes here are category 1 crimes based solely on the definition of sexual contact. However, when we take sexual contact together with 18 U.S.C. § 242, the charged crimes are that Edwards, under color of law, exposed two women to sexual contact. Put more bluntly, Edwards used his position as a police detective to subject two women to sexual contact. The court in *Brehe* has found rape to be a Category 1 crime. The crimes here, like rape, involve forced participation in sexual acts. Counts 4 and 5 are also Category 1 crimes.

Count three involved both kidnapping and sexual contact. Kidnapping was defined in the indictment as "the defendant restrained and confined K.S. by force, intimidation, and deception with the intent to deprive K.S. of the right to bodily integrity."<sup>13</sup> We find that kidnapping with

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<sup>13</sup> Pet. Ex. 2 at 3.

the intent to commit a sexual crime, as occurred here, is a crime of violence against a person, is analogous to rape in that respect, and is a Category 1 crime.

All of Edwards' crimes are crimes involving moral turpitude.

### **Summary**

Edwards is subject to discipline under § 590.080.1(2) and (3). The hearing presently scheduled for December 4, 2013 is canceled.

SO ORDERED on September 30, 2013.

*\s\ Sreenivasa Rao Dandamudi*  
SREENIVASA RAO DANDAMUDI  
Commissioner